

**BEFORE THE  
U.S. DEPARTMENT OF ENERGY  
Washington, D.C. 20585**

In the Matter of:

**Perlick Corporation**

(refrigerators/refrigerator-freezers/freezers)

Case Number: 2013-SE-14001

Issued: April 15, 2015

**NOTICE OF PROPOSED CIVIL PENALTY**

Number of alleged violations: **841**

Maximum possible assessment: **\$168,200**

Proposed civil penalty: **\$168,200**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Perlick Corporation (“Perlick”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. Perlick manufactured and distributed in commerce in the United States freezer basic model HP24F (“basic model HP24F”) through September 11, 2014.
2. Basic model HP24F is a “covered product” as defined in 10 C.F.R. § 430.2.
3. Between April 15, 2010, and September 11, 2014, Perlick distributed in commerce in the United States 841 units of basic model HP24F.
4. DOE’s testing of three units of basic model HP24F,<sup>1</sup> conducted in accordance with DOE test procedures (*see* 10 C.F.R. Part 430, Subpart B, Appendix B1), and DOE’s calculations in accordance with 10 C.F.R. Part 429, Subpart C, Appendix B,

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<sup>1</sup> All units that DOE tested bore the model number HP24FS. On August 1, 2013, Perlick submitted certification report CCMS # 32150, in which it listed individual model HP24F as falling within basic model HP24F. Perlick did not certify any individual models beginning with “HP24F” as part of any other basic model prior to September 12, 2014. On that date, Perlick submitted CCMS # 50473, certifying two new basic models: HP24F\*-3-1\*\* and HP24F\*-3-5\*\*. Accordingly, all units that have individual model numbers beginning with “HP24F” and were distributed prior to September 12, 2014, are included in basic model HP24F.

demonstrated that basic model HP24F does not comply with the federal standards set forth at 10 C.F.R. § 430.32(a).

5. Given the tested units' measured volumes, their respective maximum permissible rates of energy consumption were 494, 493, and 494 kilowatt-hours per year (kWh/yr).<sup>2</sup> Based on their performance during testing, these units consumed energy at the rates of 646, 659, and 624 kWh/yr, an average of more than twenty percent above the federal limit.<sup>3</sup>

**The following information is provided in question and answer format to help explain Perlick's legal obligations and options.**

*What do I do now?*

DOE is offering to settle this enforcement action for the amount listed in paragraph III.2.a of the attached Compromise Agreement. To accept this settlement offer, you must submit the signed Compromise Agreement and then pay the fine within thirty (30) calendar days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law. You have other options as described below.

*What are my other options?*

If you do **not** agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will

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<sup>2</sup> Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, for a freezer in product class 17 is 391.0 plus the product of 11.40 and the total adjusted volume of the particular freezer (11.40AV + 391.0). The tested basic model falls into product class 17 because it is a compact upright freezer with automatic defrost. See 10 C.F.R. § 430.32(a).

<sup>3</sup> Prior to testing the three units discussed above, DOE also conducted an assessment test on an initial unit of the basic model. Based on DOE's assessment test, the unit's annual energy use was 848 kWh/yr. At Perlick's request, DOE re-tested this unit in a slightly different configuration. Based on the re-test, the unit's annual energy use was 897 kWh/yr.

Given the variance in the performance of this unit for the two tests, DOE has excluded the unit from the calculations underlying its allegations in this Notice. Because DOE has only included three units, it has used the calculations applicable to low-volume products and equipment. See 10 C.F.R. Part 429, Subpart C, Appendix B. DOE notes, however, that the basic model would also fail to comply with the applicable standard if either test result for the initial unit were included and DOE used the calculations for high-volume products and equipment. See 10 C.F.R. Part 429, Subpart C, Appendix A.

Finally, DOE notes that the initial unit, which was the most consumptive unit, was purchased on the market by DOE. The other three units, which were less consumptive, were built and provided by Perlick in response to a Test Notice.

result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (“ALJ”) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the settlement amount that DOE has offered. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to:                      abigail.chingos@hq.doe.gov  
By fax to:                         (202) 586-3274  
By private carrier to:         Abigail Burger Chingos  
   Trial Attorney (GC-32)  
   U.S. Department of Energy  
   1000 Independence Ave., SW  
   Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

*What should I include in my response?*

- 1) If you wish to accept DOE’s settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE’s settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act (“DCIA”) requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

*How did DOE calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the United States. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a

maximum penalty of \$200 per unit for 841 units distributed in commerce in the United States beginning on April 15, 2015. If the case goes to hearing, this number may be adjusted to account for any additional information obtained.

If you have any questions, please contact Abigail Burger Chingos via phone at (202) 586-5060 or email at [abigail.chingos@hq.doe.gov](mailto:abigail.chingos@hq.doe.gov).

Issued by:

/s/\_\_\_\_\_  
Laura L. Barhydt  
Assistant General Counsel for  
Enforcement